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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 914,513	08 28 2001	Jacques Ladyjensky	1471.073	7942

21917 7590 06 12 2003

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EXAMINER

NEGRON, ISMAEL

ART UNIT PAPER NUMBER

2875

DATE MAILED: 06 12 2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/914,513

Applicant(s)

LADYJENSKY, JACQUES

Examiner

Ismael Negron

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 24 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1 and 13-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1, 13 and 19 is/are rejected.
- 7) ☐ Claim(s) 14-18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 28 August 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on 24 March 2003 is: a) ☐ approved or b) ☒ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed on March 24, 2003 has been entered. Claim 1 has been amended. No claims have been cancelled. Claims 13-19 have been added. Claims 1 and 13-19 are still pending in this application, with claim 1 being independent.
2. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on March 24, 2003 have been disapproved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

Abstract

3. The abstract of the disclosure is objected to because it fails to positively recite that which the applicant believes is new in the art to which the invention pertains. Correction is required. See MPEP § 608.01(b).
4. The examiner suggests the following amendments:
 - in the second sentence, delete the words "such as aluminum"; and
 - in the third sentence delete the words "which may be further reflected if the pouch is made of aluminum foil" and insert the words --the inner pouch foil then serving as a reflector for such light. The light output may be further increased if the foil is aluminum foil. --.

Drawings

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "1" has been used to designate different parts in different embodiments. See Figures 1 (where a rectangular inner pouch is disclosed) and 3 (where a circular inner pouch is disclosed). Correction is required.

In addition, note the following:

- reference character "2" in Figures 2 (where a rectangular aluminum foil is disclosed) and 4 (where a circular aluminum foil is disclosed);
- reference character "3" in Figures 2 (where a rectangular aluminum foil is disclosed) and 4 (where a circular aluminum foil is disclosed);
- reference character "4" in Figures 1 (where a rectangular periphery is disclosed) and 3 (where a circular periphery is disclosed);
- reference character "6" in Figures 1 (where a rectangular outer pouch is disclosed) and 3 (where a circular outer pouch is disclosed);
- reference character "7" in Figures 2 (where a rectangular film is disclosed) and 4 (where a circular film is disclosed);
- reference character "8" in Figures 2 (where a rectangular film is disclosed) and 4 (where a circular film is disclosed);
- reference character "9" in Figures 1 (where a rectangular periphery is disclosed) and 3 (where a circular periphery is disclosed); and

- reference character "12" in Figures 2 (where a rectangular felt is disclosed) and 2 (where a circular felt is disclosed).

The applicant is advised that the reference characters must be properly applied, with no single reference character being used for two different parts or for a given part and a modification of such part. See MPEP §608.01(g). Correction is required.

As evidenced by applicant's statements, Figures 1 and 2, and Figures 3 and 4 present two different embodiments of the claimed invention and structural elements from one embodiment are distinct at least in shape from those used in the other embodiment. The Examiner suggests the use of numerals and prime numerals (e.g. 6 and 6') to designate an element in one embodiment and as analogous element in the second embodiment.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 13 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cameron (U.S. Pat. 4,635,166).

Cameron discloses an illumination device having:

- **an outer pouch**, Figure 4, reference number 14;

- **the outer pouch being made of a substantially transparent material**, column 3, lines 3-6;
- **the outer pouch material being resilient**, column 3, lines 3-6;
- **an inner pouch located inside the outer pouch**, Figure 4, reference number 26;
- **the inner pouch containing a first chemical component**, Figure 4, reference number 28;
- **the outer pouch containing a second chemical component outside of the inner pouch**, Figure 4, reference number 30;
- **one of the chemical components being an activator solution**, inherent;
- **the inner pouch being breakable by squeezing**, column 2, lines 34-36;
- **breakage of the inner pouch causing the first chemical component to mix with the second chemical component**, column 3, lines 21-25;
- **the chemical causing a chemiluminescent reaction when mixed**, column 3, lines 25 and 26;
- **an aluminum foil**, Figure 4, reference number 22;
- **the aluminum foil being lined on its interior side by a polymer**, column 3, lines 3-6; and

- **the light given off by the reaction being reflected by the aluminum foil**, column 3, lines 27-31.

Cameron discloses all the limitations of the claims, except the inner pouch being made of aluminum foil, or one of the chemical components being specifically an oxalate solution.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to use aluminum foil as the material for the inner pouch of Cameron, to increased the visibility by providing light output from the back surface of the outer pouch. The advantages of increasing the amount of light outputted by the device is evidenced in columns 3 and 4, lines 34-36 and 25-27, respectively.

Regarding the use of an oxalate solution as one of the reacting chemicals, while Cameron is silent as to the nature of the reactants used in the patented invention, the use of such solutions would have flown naturally to one of ordinary skill in the art at the time the claimed invention was made, since oxalate solutions are not only old and well known in the art, but generally the chemical of choice.

Allowable Subject Matter

7. Claims 14-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter:

Applicant teaches Chemiluminescent element container formed by two pouches, one contained inside the other. The inner pouch containing an oxalate solution and the outer pouch an activator solution. The inner pouch includes a metal foil, preferably aluminum, such that when the inner pouch is burst and the oxalate solution mixes with the activator solution, the metal foil serves as a reflector for the produced light. The activator solution is absorbed in a non-woven material, whereby the light takes the form of such non-woven material. A hard particle is contained inside the inner pouch for piercing the metal foil.

No prior art was found teaching individually, or suggesting in combination, all of the features of the applicants' invention, specifically the activator solution being absorbed in a non-woven material or a hard particle contained in the inner pouch for piercing the metal foil.

Response to Arguments

9. Applicant's arguments filed March 24, 2003 have been fully considered but they are not persuasive.

10. Regarding the Examiner's rejection of claim 1 under 35 U.S.C. 103(a) as unpatentable in view of Cameron (U.S. Pat. 4,635,166), the applicant argues that the cited reference fails to disclose all the features of the claimed invention, specifically the inner pouch having a metal foil.

In response to applicant's argument that Cameron fails to disclose a metal foil inner pouch, the applicant is advised that the test for obviousness is not whether the claimed invention is expressly suggested the references. Rather, the test is what the teachings of the reference would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case Cameron discloses a chemiluminescent device in the form of an outer pouch containing a first chemical component and a second, inner pouch. The inner pouch containing a second chemical component. An aluminized Mylar layer is located on the back surface of the outer pouch for serving as a reflector for the light generated by mixing the first and second chemicals. Cameron states that the use of the aluminized Mylar reflective layer greatly increases the amount of light delivered into a specific area.

Forming the inner pouch using a metal foil, specifically an aluminum foil, would have flown naturally from the disclosure of Cameron and the knowledge readily available to one of ordinary skill in the art at the time the claimed invention was made.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ismael Negrón whose telephone number is (703) 308-6086. The examiner can normally be reached on Monday-Friday from 9:00 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra L. O'Shea, can be reached on (703) 305-4939. The facsimile machine number for the Art Group is (703) 308-7382.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0956.

A handwritten signature in black ink, consisting of a stylized 'C' followed by a horizontal line and a vertical line.

Inr

June 4, 2003